

July 24, 2003

IN RE: DOCKET NO. 2002-367-C

**COPY OF DIRECT TESTIMONY OF GREG DARNELL FILED ON
BEHALF OF MCI HAS BEEN DISTRIBUTED TO THE FOLLOWING:**

McDaniel, Chief

Legal Dept. (1)

F. Belser

P. Riley

J. Spearman

Exec. Director

Manager, Utils. Dept.

Audit Dept. (1)

Commissioners (7)

tod

y, Fl, PR, JS, GW, 7 Comm, JM, JR, A, JS, WR

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July 23, 2003

**HAND DELIVERED**

The Honorable Gary E. Walsh
 Executive Director
 South Carolina Public Service Commission
 101 Executive Center Drive
 Columbia, SC 29210

Re: Proceeding to Address Inflation Based Index
 Docket No. 2002-367-C

Dear Mr. Walsh:

Enclosed are the original and twenty-six copies of the Direct Testimony of Greg Darnell on behalf of MCI. Would you please file the original, returning a clocked copy to me. Thank you for your assistance.

By copy of this letter and electronic transmission I have served all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

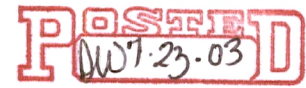
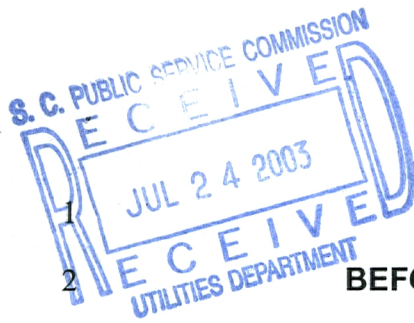
A handwritten signature in blue ink that reads "Darra Cothran".

Darra W. Cothran
 dwcothran@wchl.w.com

DWC/bjd

Enclosures.

cc: F. David Butler, Esquire
 Elliott F. Elam, Jr., Esquire
 Scott Elliott, Esquire
 Kay Berry, Esquire
 John J. Pringle, Jr., Esquire
 Patrick Turner, Esquire
 Mr. Stan Bugner
 Robert D. Coble, Esquire
 H. Edward Phillips, III, Esquire



Legal - 1

TESTIMONY OF GREG DARNELL

BEFORE THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2002-367-C

JULY 23, 2003

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SC PUBLIC SERVICE
COMMISSION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Greg Darnell, and my business address is 6 Concourse Parkway, Suite 3200, Atlanta, Georgia, 30328.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by MCI WorldCom, Inc as Senior Manager – Regulatory Economics.

Q. HAVE YOU PREVIOUSLY TESTIFIED?

A. Yes, I have testified in proceedings before regulatory commissions in Alabama, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee and on numerous occasions have filed comments before the FCC. Provided as Attachment 2 to this testimony is a summary of my academic and professional qualifications.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is to respond to the direct testimony of Dr.

-1- RETURN DATE: OK WJ
OFFICE: OK BW

1 James Spearman filed in this docket on July 9, 2003 regarding how the
2 term "abuse of market position" should be defined if it is to be defined.

3
4 **Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THIS MATTER**
5 **IN ANOTHER PROCEEDING?**

6 A. Yes. This Commission addressed this matter in SC Docket No. 1999-
7 469-C.

8
9 **Q. WHAT WAS THIS COMMISSION'S DECISION ON THIS MATTER IN**
10 **THIS PREVIOUS PROCEEDING?**

11 A. The Commission declined to adopt BellSouth's definition of abuse of
12 market position and stated it "preferred to establish these standards
13 through cases that come before us."¹

14
15 **Q. DID YOU TESTIFY IN THE COMMISSION'S PREVIOUS PROCEEDING**
16 **THAT ADDRESSED THIS MATTER?**

17 A. Yes.

18
19 **Q: IS THE CONCLUSION REACHED BY DR. SPEARMAN IN THIS**
20 **PROCEEDING CONSISTENT WITH THIS COMMISSION'S PREVIOUS**
21 **FINDING ON THIS MATTER?**

22
23 A: Yes. Dr. Spearman concludes that allegations of abuse of market
24 position should be considered by this commission on a case-by-case
25 basis.

26

¹ In re: Proceeding to Review BellSouth Telecommunications, Inc., Guidelines for Alternative Form of Regulation, Before the Public Service Commission of South Carolina, Docket No. 1999-469-C, Order Ruling on Guidelines, September 26, 2000, p.

1 **Q: DO YOU AGREE WITH THIS CONCLUSION?**

2 A: Yes. This position is consistent with this Commission's previous finding
3 on this matter and it is consistent with the conclusion I reached in my
4 testimony in this Commission's previous proceeding on this matter.

5
6 **Q: DR. SPEARMAN STATES THAT THE PHRASE IN THE STATUTE**
7 **"ABUSE OF MARKET POSITION" WOULD NOT BE VERY**
8 **MEANINGFUL UNLESS THE WORD "POSITION" IS GIVEN THE SAME**
9 **MEANING AS "POWER" . DO YOU AGREE WITH THIS**
10 **STATEMENT?**

11
12 A. No. I do, however, fully agree with the preceding sentence in Dr. Spearman's
13 testimony where he states, "a person trained in economics or business would not
14 apply the same meaning to the words "position" and "power"." I provide
15 deference to the South Carolina lawmakers and believe the statute specifically
16 uses the word "position" so that the requirements of the statute would provide
17 this Commission with the flexibility it needs to do its job. Had the South
18 Carolina lawmakers wanted the statute to be interpreted to mean abuse of market
19 power, the word "power" would exist in this phrase in the statute and word
20 "position" would not exist. Many South Carolina state legislators are trained in
21 economics and business and it should be accepted that they know the difference
22 between these two terms. Therefore, to this Commission, the statute's specific
23 use of the word "position" is very meaningful.² It means the statute intentionally

11.

² As this Commission found in its previous order in Docket 1999-178-C, Order No. 2000-030 ("BellSouth Price Regulation Order"), at page 15 & 16, "Of course the General

1 gives this Commission the additional authority to consider and limit ILEC activity
2 beyond that which falls under the definition of abuse of market power.

3

4 **Q. WHAT WOULD OCCUR IF THIS COMMISSION DEFINED THE**
5 **STATUTE'S TERM "ABUSE OF MARKET POSITION" TO MEAN**
6 **"ABUSE OF MARKET POWER"?**

7
8 A. This Commission's authority to consider complaints would be limited to that of a
9 redundant antitrust court and as stated by Dr. Spearman, "Unfortunately, this can
10 not be done quickly or cheaply. This also requires technical expertise which this
11 Commission has in very limited quantity." In other words, adopting an "abuse of
12 market power" definition would require this Commission to function in a manner
13 for which it is not prepared.

14

15 **Q. WHAT DEFINITION SHOULD THIS COMMISSION GIVE TO THE**
16 **WORD "POSITION" AS CONTAINED IN THE STATUTE?**

17
18 A. Some of the ordinary meanings of the word position that would apply in this case
19 are location, situation, rank, place in order, and strategic place.³ When used in
20 combination with the term "abuse of market" and in the context of regulation of
21 incumbent LECs ("ILEC"), the word position can broadly mean, amongst of
22 things, an ILEC's abuse of its physical location in a market, abuse of its

Assembly's intent is binding here. The pertinent standards can be set forth succinctly. Specifically, the courts will not presume that the General Assembly intended a meaningless result in enacting new legislation."... "In addition, the Courts will not expand a statute's meaning when the statute is clear on its face."

³ See, BellSouth Price Regulation Order at page 16, "The Commission is mindful of the rule of statutory interpretation that dictates that words used by the General Assembly are

1 leadership rank in a market, abuse of a particular set of circumstances, abuse of
 2 standing or level of importance, or abuse of strategic area of business such as a
 3 growing or emerging market.

4
 5 **Q. DOES THE COMMISSION NEED TO DEFINE “ABUSE OF MARKET**
 6 **POSITION”?**

7
 8 **A.** No. The phrase “abuse of market position” is clear on its face and does not need
 9 to be further defined. Further, attempting to define the term “abuse of market
 10 position” would be counterproductive for this Commission. No one can
 11 accurately forecast all the types of future complaints that will be brought before
 12 this Commission. Therefore, defining the broad term “abuse of market position”
 13 can have no pro-competitive purpose and would only serve to unduly limit the
 14 types of complaints that could be brought before this Commission in the future by
 15 CLECs and other potentially aggrieved parties, and unduly limit this
 16 Commission’s ability to act on such complaints.

17
 18 **Q. SHOULD THIS COMMISSION’S ABILITY TO REVIEW COMPLAINTS**
 19 **OF ANTICOMPETITIVE CONDUCT BE LIMITED AT THIS TIME?**

20
 21 **A.** No. The current local telecommunication market is supposed to be an emerging
 22 competitive market, although certain statistics suggest that the development of
 23 competition in the local market is emerging more slowly in South Carolina than it

to be given their ordinary meaning.”

1 is in the other BellSouth states.⁴ Regulatory oversight is easiest in total monopoly
 2 and fully competitive markets, and most difficult in emerging competitive
 3 markets. As such, this is a time where this Commission's regulatory oversight of
 4 ILECs is most needed.

5
 6 **Q. WHAT SHOULD THIS COMMISSION DO IN THIS PROCEEDING?**

7 A. The Commission should provide the word "position" its broad ordinary meaning,
 8 not attempt to further define the term "abuse of market position", continue to
 9 evaluate complaints on a case-by-case basis, and expeditiously act on complaints
 10 brought against ILECs. The Commission should not define "abuse of market
 11 position" to mean "abuse of market power" as this would not be consistent with
 12 the ordinary definition of the word position, would not be consistent with the
 13 intent of the statute, and would expand the statute's meaning when it is clear on
 14 its face.

15
 16 **Q. WHY SHOULD THE COMMISSION EXPEDITIOUSLY ACT ON**
 17 **COMPLAINTS BROUGHT AGAINST ILECs?**

18
 19 A. Unlike the ILECs, many and most new competitors do not have the financial deep
 20 pockets needed to engage in extended periods of litigation. It therefore can be a
 21 rational and profitable business strategy for ILECs to engage in protracted
 22 litigation instead acting in a fair and non-discriminatory manner. As such, like

⁴ As indicated on attachment 1, South Carolina trails all other BellSouth states in the

1 what has been done recently in Florida, Georgia and Texas, the South Carolina
2 Commission should establish an expedited dispute resolution process whereby all
3 complaints are resolved within 120 days of their filing date.

4

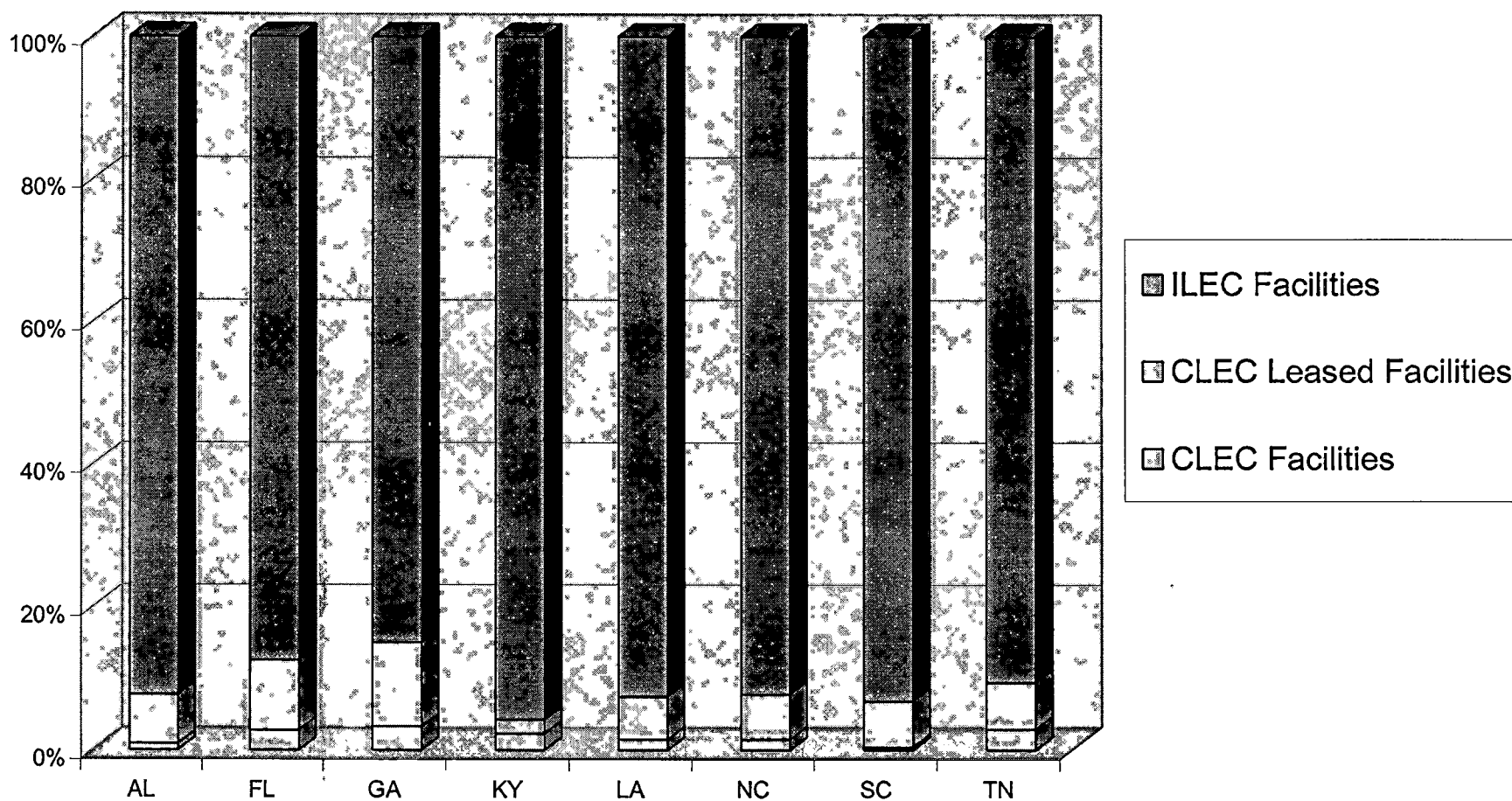
5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes.**

development of local competition.

Attachment 1

LEC Market Share by Type - BellSouth Region



Data Source: FCC Industry Analysis and Technology Division, Local Competition: Status as of December 31, 2002, released June 2003, Tables 9 & 10. Mississippi data withheld to maintain firm confidentiality.

Attachment 2

GREGORY J. DARNELL
PROFESSIONAL EXPERIENCE

4/15/03 – Date SENIOR MANAGER, MCI, REGULATORY ECONOMICS

Responsibilities: Define MCI's economic policy and ensure effective advocacy.

6/21/96 – 4/14/03 SENIOR MANAGER, WORLDCOM, INC., PUBLIC POLICY.

Responsibilities: Define WorldCom's public policy and ensure effective advocacy.

9/1/95 - 6/21/96 SENIOR STAFF SPECIALIST III, MCI, NATIONAL ACCESS POLICY.

Responsibilities: Define MCI's national access policies and educate field personnel. Present MCI's access policy positions to Executive Management and obtain concordance.

9/1/94 - 9/1/95 SENIOR STAFF SPECIALIST III, MCI, CARRIER RELATIONS.

Responsibilities: Manage MCI's business relationship with ALLTEL.

1/1/93 - 9/1/94 SENIOR STAFF SPECIALIST II, MCI, SOUTHERN CARRIER MANAGEMENT.

Responsibilities: Chief of Staff.

9/1/91 - 1/1/93 MANAGER, MCI, ECONOMIC ANALYSIS.

Responsibilities: Testify before state utility commissions on access issues. Write tariff and rulemaking pleadings before the FCC. Serve as MCI's expert on Local Exchange Carrier revenue requirements, demand forecasts and access rate structures.

1/1/90 - 9/1/91 SENIOR STAFF SPECIALIST I, MCI, FEDERAL REGULATORY.

Responsibilities: Direct analysis to support MCI's positions in FCC tariff and rulemaking proceedings. Provide access cost input to MCI's Business Plan. Write and file petitions against annual tariff filings and requests for rulemaking. Train State Utility Commissions on the use and design of financial databases.

1/1/89 - 1/1/90 STAFF SPECIALIST III, MCI, FEDERAL REGULATORY.

Responsibilities: Track and monitor tariff transmittals for Ameritech, BellSouth, SWBT and U S West. Author petitions opposing RBOC tariff filings. Represent MCI at National Ordering and Billing Forum.

10/9/87 - 1/1/89 SUPERVISOR, MCI, TELCO COST ANALYSIS.

Responsibilities: Supervise team of analysts in their review of interstate access tariff changes. Coordinate updates to Special Access billing system.

Attachment 2 (CONT)

1/1/86 - 10/9/87 *FINANCIAL ANALYST III, MCI, TELCO COST.*

Responsibilities: Analyze MCI's access costs and produce forecasts.

6/1/85 - 1/1/86 *STAFF ADMINISTRATOR II, MCI, LITIGATION SUPPORT.*

Responsibilities: Support MCI's antitrust counsel in taking depositions, preparing interrogatories and document requests.

1/1/84 - 6/1/85 *PRODUCTION ANALYST, MCI, LITIGATION SUPPORT.*

Responsibilities: Review and abstract MCI and AT&T documents obtained in MCI's antitrust litigation.

8/1/82 - 1/1/84 *LEGAL ASSISTANT, GARDNER, CARTON AND DOUGLAS.*

Responsibilities: Research and obtain information from the FCC, FERC and SEC.

EDUCATIONAL EXPERIENCE

9/1/00 – Date *UNIVERSITY OF MARYLAND UNIVERSITY COLLEGE, GRADUATE SCHOOL
OF TELECOMMUNICATIONS MANAGEMENT*

Studies: Wireline, TCP/IP and Wireless Network Engineering, Management Accounting, Strategic and International Business Management, and Management Information Systems.

9/1/91 - 1/1/93 *GEORGE WASHINGTON UNIVERSITY, GRADUATE SCHOOL OF
TELECOMMUNICATIONS.*

Studies: Advanced courses in Public Policy, Electrical Engineering and Economics.

9/1/78 - 6/1/82 *UNIVERSITY OF MARYLAND, B.A., ECONOMICS.*

Studies: Macro and Micro Economics, Statistics, Calculus, Astronomy and Music.

CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services, LLC, do hereby certify that I have served a copy of the Testimony of Greg Darnell by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

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The Public Service Commission
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COMMISSION

Mr. Stan Bugner
State Director/Reg. & Government Affairs
Verizon Select Services, Inc.
1301 Gervais Street, Suite 825
Columbia, S.C. 29201


Betty J. DeHart

SWORN to before me this

23rd day of July, 2003.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/14/07